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C O N F I D E N T I A L SECTION 01 OF 02 BUCHAREST 001267

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STATE DEPT FOR EUR/NCE - AARON JENSEN

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TAGS: [PGOV](#) [KCOR](#) [KJUS](#) [PREL](#) [RO](#)  
SUBJECT: ROMANIA: AMBASSADOR'S MEETING WITH PROSECUTOR  
GENERAL KOVESI

REF: BUCHAREST 1230 AND PREVIOUS

Classified By: Political Counselor Theodore Tanoue for Reasons 1.4 (b) and (d).

¶1. (C) Summary. In a meeting with the Ambassador, Prosecutor General Kovesi expressed concern that new amendments to the Criminal Code and Criminal Procedure Code would affect all court cases and turn Romania into a "paradise for crime." Kovesi expected parliament to override the president's veto and noted that this was just the latest in a series of moves to erode prosecutorial independence. The Ambassador raised concerns that Romania was becoming a haven for cyber crime; Kovesi responded by welcoming enhanced cooperation from the embassy on cyber crime and corruption in particular. End Summary.

¶2. (C) The Ambassador met with Prosecutor General Laura Kovesi on November 7 and discussed the effects of parliament's recently passed amendments to the Criminal Code and Criminal Procedure Code (reftel) as well the need to enhance bilateral cooperation on cyber crime. Kovesi said she feared that the sweeping changes (which the interpreter labeled simply "criminal amendments") would affect all cases before the courts and turn Romania into a "paradise" for crime. She said that parliament was likely to override an expected presidential veto.

¶3. (C) Kovesi observed that prosecutors' work on corruption cases involving five current ministers, several past ministers and many high-level public servants had "attracted adversity." She claimed that Justice Minister Chiuariu only feigned support and that his actions were aimed at restricting prosecutors, as evidenced by his attempt to dismiss a key anticorruption prosecutor at the National Anticorruption Directorate (DNA). She added that the Superior Council of Magistrates (CSM) was disappointingly silent about recent legislative actions, and complained of the lack of institutional outrage against dismantling the independence of prosecutors.

¶4. (C) She said that the amendments followed three other significant moves by the government and legislature to impede prosecution of serious crime in Romania. These included parliament's rejection of the law establishing the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) which would have empowered DIICOT to prosecute organized crime in the same way that DNA had been made responsible for prosecuting high-level corruption. The President had sent the law back to parliament and the law was now blocked in parliament, with opponents of prosecutorial independence possibly aiming to reorganize DIICOT and DNA to limit their independence.

¶5. (C) A second blow came in the changes enforced retroactively to the law on ministerial responsibility, in

which the Constitutional Court decided (in response to an appeal in the ongoing corruption case against former Prime Minister Adrian Nastase) that former ministers should enjoy the same immunity from prosecution as current ministers, lifted only with presidential or parliamentary approval. The DNA had appealed the High Court's application of this constitutional finding to Nastase's case since such findings usually were not applied retroactively. Kovesi said that the government dismantled the president's "green light" commission and had yet to reconstitute a replacement, effectively blocking ten cases against past and current ministers from being prosecuted.

¶6. (C) The third blow came in September when parliament modified the Fiscal Code to prevent financial inspectors from requesting investigations following routine controls. Kovsei said that prosecutors no longer had the administrative reports necessary to launch money laundering investigations. She said the reality was that all files regarding macroeconomic crimes were now blocked and that her office could direct resources only toward a few cases.

¶7. (C) Kovesi complained that her office was not consulted before major changes were made by parliament, and that prosecutors were summoned by a parliamentary commission in an attempt to force investigators to reveal details of ongoing investigations. She noted bitterly that the underlying philosophy behind these moves was the presumption that "prosecutors are breaking the law and suspects are victimized and need protection."

¶8. (C) In an exegesis of the worst aspects of the revised Criminal Code and Criminal Procedure Code, Kovesi said that prosecutors would now have to seek in writing a suspect's

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refusal to hand over evidence before being able to seek a warrant from a judge. She described an absurd scene where police would have to ask a suspect to hand over drugs, write down the refusal, then hope that a search warrant might help them find something when they returned. Similarly, an apprehended homicide suspect would have to be released out of police custody if the defense attorney asked for the additional 24 hours guaranteed in the new amendment. She added that nearly all criminal investigations would be limited to six months, unless technical expertise was required. She said this arbitrary time limit would nullify several hundred pending cases. Kovesi said that the most worrying provision was a new 10 million euro threshold for "serious" crimes. She added that lesser crimes would have narrower statutes of limitations that would likely draw only suspended sentences.

¶9. (C) Kovesi was also critical of Romania's judicial system, noting that she was recently reprimanded by the High Court when she spoke out against recent judgments that referred high-level cases back to prosecutors for procedural reasons. She noted an 82-year-old woman was sentenced to prison during the same time period and asked rhetorically "Why is it okay to decide in this case, but avoid politicians' cases?"

¶10. (C) The Ambassador brought to Kovesi's attention the slow progress in the investigation of a Romanian hacker who had caused serious damage to eBay over several years, noting that eBay might soon decide to block Romanian IP addresses from its services, and that five other e-commerce companies were considering following suit. Kovesi said she would speak with the case prosecutor, figure out what needs to be done, and meet with the visiting senior eBay executives next week. Kovesi said she highly valued U.S. training provided in cyber crime and welcomed greater cooperation. She said that the fight against organized crime, corruption, cyber crime, and credit card fraud were among her top priorities, and welcomed further support from the Embassy in specifically addressing cyber crime and corruption. Kovesi thanked the Ambassador for taking the initiative to meet, and thanked the Embassy

for its intention to release a press statement that would draw some attention to the problems of the new criminal code amendments.

¶11. (C) Comment: Prosecutor General Kovesi's concerns regarding the impact of the recent parliamentary changes to the criminal statutes appear to be well-founded. Institutionally, prosecutors appear isolated and under increasing political pressure. While Democratic Party and Liberal Democratic Party parliamentarians have assured us that they will vote against these amendments when they are vetoed by President Basescu, we have heard informally that the old guard of the Social Democrats and the governing Liberals have the votes to override. The Ambassador will continue to speak out against these amendments, and plans to give a speech next week reviewing both past accomplishments and conveying challenges in the areas of civil society, press freedom, and the fight against corruption. End Comment.  
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